F.M.S. REPORTS

[ORIGINAL CIVIL JURISDICTION]

THOMAS, C.J.

July 22, 1937.

KUMARAPPA CHETTIAR Son of RAMAN CHETTIAR OF KLANG.....Plaintiff.

vs.

THE FEDERATED MALAY STATES .....Defendant.

[SELANGOR ORIGINATING SUMMONS No. 199 of 1936]

Estate duty—gifts inter vivos—entries in account books of partnership in which deceased was a partner—Estate Duty Enactment (Cap. 136) S. 5 Sub-ss. (i) & (iii)—application to Court under Section 5 of the Estate Duty Enactment.

The facts are sufficiently set out in the judgment below.

Held, in the circumstances of the case, no gift.

Toswill for the Plaintiff. Entries in books show deposits in the names of deceased's sons. Onus on defendant of proving deposits are "property passing" within meaning of the Estate Duty Enactment. Deceased not competent to dispose of same within meaning of Section 5 (i) of Estate Duty Enactment. Under Sub-section (iii) of Section 5, Estate Duty Enactment, gifts in certain circumstances deemed to be "property passing." Onus on defendant of proving gift within provisions of Sub-section. He cited no authority as to onus. Intention of testator to make gift clear from letters and instructions for Will. Opening of accounts in names of sons equivalent to gift of investments. No interest reserved to donor. Sons the only persons entitled. Accounts not accounts of deceased but of firm. Collector of Estate Duty in assessment allowed deposits as debts of firm. Deceased did everything necessary to perfect gift. *Gould* v. *Commissioner of Stamp Duties* (1934) A.C. p. 69 distinguished.

[His Lordship held that the onus to begin rested upon Toswill].

Joaquim for the defendant. The mere fact of opening an account in the name of a son does not operate as a gift to the son. It is an incomplete gift revocable by the donor at any time before it is acted upon. Here the sons over a long period of years after the alleged gift never drew anything. The deceased controlled the accounts, first because he could revoke at any time before the alleged gifts were acted upon, and secondly because the alleged gifts could not be acted upon without his order. The latter because the accounts were not opened in the names of the sons *simpliciter*, but in their names "to the order of" the deceased, and the deceased therefore (apart from the gifts being incomplete) never relinquished control of the accounts. As to gifts *inter vivos*, see 15 *Hailsham* p. 708 Section 1234 *et seq.* and cases cited therein. Even if a valid gift had been made, the subject matter was still "property passing" within the meaning of the Estate Duty Enactment because donees had not enjoyed possession to the exclusion of the donor.

Cur. Ad. Vult.

THOMAS, C.J.—The plaintiff Kumarappa Chettiar, executor under the will of Raman Chettiar, deceased, hereinafter referred to as the deceased, applies by Originating Summons for the determination by the Court of the question whether the Collector of Estate Duty's assessment of the value of the estate of the deceased should be reduced by the sum of $123,565.17, and whether in the event of such a reduction being made excess of duty paid should be refunded.

The decision of the former question depends upon whether three sums of $41,188.39, together amounting to $123,565.17 come within any of the provisions of exceptions contained in section 5 of the Estate Duty Enactment (Cap. 36 Revised Laws). It is contended by the plaintiff that there had been a *donatio inter vivos* and that on that account the sum in question could not be included in property passing on the death of the deceased.

The deceased had been for a number of years in business with his brother Periakaruppan Chettiar, and in 1928 on the taking of an account of the properties of the firm it was considered that there should be some sort of division between the partners of what were considered to be surplus profits or assets.

These assets consisted mainly of landed property. There was little, if any, available cash and few, if any, liquid assets. The division might have been made by transfers of parcels of land. This was not done. Instead credits were made in the books of substantial sums to each of the partners. A debit was entered against the firm for $300,000/- and a credit was entered in favour of each of the partners for $150,000/-.

Against the sum of $150,000 credited to the deceased a debit of $75,000 was entered, and at the same time three sums of $25,000 were credited in three accounts in the names and under conditions as to which I will refer presently. And so also against the sum of $150,000 credited to the brother, Periakaruppan Chettiar there was a debit of $75,000 in two accounts in sums of $40,000 and $35,000. In the Ledger, the entry relating to the deceased was as follows:—(Ex: GA1) Page 318.

"Arimalam K.R.M. & debit & credit a/c.	Credit.	Debit.
Credit: per M.R.M.K. as from 7th of this month	$150,000.00	
Debit at the same time: per account of K.R.M. Kumarappan, Perichiappan, and Periakaruppan as from this date		$75,000.00

In the M. R. M. Firm Day Book there are the following entries under the 31st day of Auni, Vibhava Year, corresponding to 14.7.28, Ex. C.

Particulars.	Credit.	Debit.
Arimalam M.R.M. K. Current Account debit as on the 7th inst. per K. RM's. account, $150,000 and per K. Pr's. account $150,000 total debit being ..		$300,000.00
K. RM. Credit per above as on 7th instant ..	$150,000.00	
K. RM. Debit per accounts of K. RM. Kumarappan, Perichiappan and Periakaruppan as on this date		75,000
K. PR. Credit per M.R.M. K. as on 7th inst. ..	$150,000.00	
K. PR. Debit per account of K.PR. Ramanathan Umaiyal, as on this date		75,000
K. RM. Kumarappan' Thavanai' deposit account credit, to the order of the said RM. bearing interest at the rate of being a rate of 1/16 above the Penang three monthly 'Thavani' deposit rate, credit as on this date ..	25,000.00	
K. RM. Perichiappan 'Thavanai' Deposit account credit, to the order of the said RM. bearing interest at the rate of being a rate 1/16 above the Penang three-monthly "Thavanai" deposit rate, credit as on this date ..	25,000.00	
K. RM. Periakaruppan 'Thavanai' Deposit account credit, to the order of the said RM. bearing interest at the rate of being a rate 1/16 above the Penang three-monthly 'Thavanai' deposit rate, credit as on this date ..	25,000.00	
K. PR. Ramanathan 'Thavanai' deposit account credit to the order of the said PR., bearing interest at the rate of being a rate 1/16 above the Penang three-monthly 'Thavanai' deposit rate, credit as on this date	45,000.00	
K. PR. Umaiyal 'Thavanai' deposit account credit to the order of the said PR., bearing interest at the rate of being a rate 1/16 above the Penang three monthly 'Thavanai' deposit rate, credit as on mnV.....		$300,000.00

At Pages 192, 193, 194 of the Chettiar Ledger of M. RM. Firm, Klang, appear three accounts, translations of which have been put in. The three accounts are identical except as to the headings of the accounts.

The first reads K. RM. Kumarappan "Thavanai" deposit account the second K. RM. Perichiappan "Thavanai" deposit account, the third K. RM. Periakaruppan "Thavanai" deposit account.

In the copies supplied to me by the courtesy of Mr. Joaquim since the original exhibits have been mislaid, the word ARIMALAM appears written (not typewritten) in the block letters before the letters K. RM. in the first two accounts and not in the third. The first credit is all that is necessary to be set out there. It is the same in all three accounts and is as follows, save that there is a slight variation, possibly due to the translation which does not affect the meaning.

"Vibava year. Ani. 31. 14.7.28.	Credit to the order of the said R. M. bearing interest at the rate of..being a rate 1/16 above the three-months "Thavanai" deposit rate prevailing in Penang as on this date	$25,000.00

Then follow calculations of interest with the resulting total of $39,003.01. There are only credits for interest in the three accounts. There are no debits. Some doubt was suggested as to the correctness of the translation of these accounts and accordingly the Court Interpreter was affirmed. His evidence was directed particularly to the words "Credit to the order of the said RM." He gave the Tamil words as follows 'VIRAVU MELPADI RUANNA MANA ORDARUTKU.' These he said meant respectively

credit aforesaid RM. to order." So according to the books the arrangement was that firstly the deceased was credited with $150,000, and at the same time three accounts were opened on Thavanai account each for $25,000 under titles or headings of a combination of initials with a final name. The initials remained the same; the final name changed. It has been stated that the final names were the names of the three sons of the deceased. It has also been stated in evidence that the initials represented the Vilasums of the three sons. These were composed of the letter K. representing the grandfather; the letter RM. representing the father. There was evidence that this is the recognised way of describing persons in India.

This use of initials is supposed to follow some recognised rule. It may be so; but it is very difficult to understand. The initials M. RM. are said to be those of the firm in which the deceased and his brother were partners. The brother's name is Periakaruppan. His father's initial was K. So he is K. Periakaruppan. His grand-father's initials do not appear.

The deceased was Raman. But he was Ramanathan as well. The Originating Summons is headed:—

> "In the matter of the Estate of Raman Chettiar son of Kumarappa Chettiar, also known as M. RM. (or Moona Ravana Mana) Raman Chetty or Chettiar son of Kumarappa Chetty or Chettiar also known as K. RM. (or Koona Ravana Mana) Raman Chetty or Chettiar son of Kumarappa Chetty or Chettiar, deceased."

The firm name is stated to be M. RM. A letter addressed to Periakaruppan has the following:— 'M. RM. K. Periakaruppan Chettiar' from 'M. RM. Raman Chettiar.' In that case the K. is employed for Periakaruppan and not for Raman.

It is unfortunate that there is no law in the Federated Malay States requiring the registration of business names. At present the use of initials, varied continuously, termed Vilasums, leads to endless confusion. It is not surprising that allegations are frequently made that the use is only too often a cloak for dishonesty and a means of avoiding the payment of estate or other duties.

Some such suggestions have been made in the present case. It is not necessary in the view I take of this case for me to consider whether there is any truth in such suggestions. But I wish to emphasize that in my opinion it is most unfortunate that a practice should be allowed to continue which is open to serious abuse and is being constantly criticised. I can see no reason why all people trading in the Federated Malay States should not use names as do European traders, or why these names should not be registered.

In the Exhibit C. it is obvious that the entry "K. RM. credit per above as on the 7th instant $150,000," should refer to the deceased. It is not so obvious as to whom the words "per accounts of K. RM. Kumarappan, Perichiappan and Periakaruppan" refer. Periakaruppan says that "K. RM. Kumarappan," refers to Kumarappa a son of the deceased. And so also to the other two accounts each is in the name of a son. The word 'Arimalam' appearing in H^1 and H^2 does not simplify matters. But K. RM. Kumarappan might mean the deceased's Kumarappan account, since it is an ordinary method of designating accounts by the addition of some numbers, letters or words, where for business purposes it is necessary to open more than one account. Although in my opinion it is not conclusively shown that the account "K. RM. Kumarappan" represents the son only and not a subsidiary account of the deceased, I will assume for the sake of argument that it does represent the son only.

Then it will be necessary to consider the words 'To the order of the said RM. appearing in both Exhibit C and Exhibit H^1 etc. It is noticeable that RM. alone has not previously appeared. There are M. RM. K., K. RM., and K. RM. Kumarappan but no RM. We know that the deceased was RM. There is no suggestion that RM. is the same as K. RM. Kumarappan.

Now, the word ORDARUTKU is said to mean 'to order.' There was an attempt to argue that ORDARUTRU means the same as 'MARAL.' The following enlightening explanation was given as to the effect of the ORDARUTKU:—

> "The word signifies that before the money is paid out to the depositor Raman Chettiar is asked—a reference is made to him —assuming that the account is in the name of the son—The business is carried on by a manager—If I had been the manager and the boy was a good one and was going to use the money in a good way, the money would be paid out without asking the deceased. If wanted for a purpose which in the opinion of the manager was not a good purpose, then I would say I would inform your father and then give you. If the father objects and the son insists on payment, the son has to be paid the amount. If proceedings were threatened the money would have to be paid out. The object of ORDARUTKU is only for informing the father and to bring to his notice if the son is going to use the money in an improper way."

Some three witnesses expressed similar views as to the meaning of the word ORDARUTKU. They are totally inadequate to prove any custom or special meaning of the word. No Barrister or Advocate versed in Indian Law has given evidence. The Interpreter has not suggested any other meaning of the words then 'To order'. Therefore I take the meaning to be 'To order.' That is an expression which is well known amongst commercial people.

Now, then a second or subsidiary account is opened, it does not necessarily imply that the owner of the fund intends to part with its possession. Often such an account is opened as a matter of convenience in trading, and it is often arranged that some person other than the owner or opener shall have the right to draw upon it. It would be correct and usual for a note to be made as to the persons entitled to draw upon the account. If more than one, their names should be given. These presumably would appear in the account itself as a guide to any clerk receiving a cheque drawn on the account. There is no direct evidence as to such matters. It is only possible to suggest what might be considered to be correct. And sufficient note would seem to be made by entering the name of the person and the words "To order." Such an entry would direct payment out when the person mentioned gave his order.

In the account under consideration the entry of the words " To the order of the said RM." appear to me to bear out what might be expected. They indicate that the only person entitled to draw on the account is RM. Such being the case it would seem to be of little importance what name or title was given to the account.

It has been urged that the opening of the account amounted to a gift *inter vivos*. In support of this contention reference has been made to certain letters, instructions for a will, to the will of the deceased, and to communications made by the deceased to members of his family and to his brother Periakaruppan. It may be that the deceased contemplated making such a gift, but the question is whether he has actually carried out what he may have contemplated.

A gift *inter vivos* is defined in 15 *Hailsham*, page 692 S. 1210 as the transfer of any property from one person to another gratuitously. It is an act whereby anything is voluntarily transferred from the true possessor to another person, with full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver. It has been argued that the position is the same as if a cheque had been given by the deceased, that that cheque had been honoured and an account had been opened in the name of the son. This argument, however, loses sight of the words " To the order of the said RM."

It may have been due to over-cautiousness, but the fact remains that beyond having entries made in a ledger or other books of the firm, the deceased has parted with nothing, since he alone had the right to draw money from the deposit accounts and might draw out the whole amount deposited and the interest without any explanation to anybody.

There is no question of a trust having been declared. And if it was the intention to make "gift", then the gift has not been perfected, and the Court will not assist in perfecting an imperfect gift *inter vivos*. [See *In re Swinburne, Sutton* v. *Featherley*, (1926) Ch. D. p. 38; judgment of Sargant, L.J. at page 46]. Therefore I conclude that there was no gift *inter vivos*.

It has been suggested that there has been an acknowledgment by the Collector, because he had included the amount in the liabilities of the deceased's estate. Reference has been made to Exhibit KC.2 (i). That is an account of the M.RM. firm which commences on page 5 of the Ex. K.C. 2. It seems quite immaterial whether the account and the accounts therein are shewn to be due to the deceased or to his sons. They are still debts of the firm. But as against this suggested acknowledgment there is at page 3 of K.C. 2 a very clear inclusion in the assets of the deceased himself, the three items of $41,188.39 which are the subject matter of the Originating Summons.

For the reasons I have given I consider that the assessment of the Collector of Estate Duty with respect to the three sums of $41,188.39 each was correct, and that it should not be reduced by $123,565.17 or any sum in respect of these three amounts. It is not necessary to answer the second question. With regard to costs, they must be paid by the plaintiff out of the estate on the higher scale.

Judgment Accordingly.